

Environmental and Energy Study Institute
ph: 202-662-1885
fa: 202-628-1825
email: cmaq@eesi.org

— A periodic newsletter on TEA-21'S Congestion Mitigation
and Air Quality Improvement (CMAQ) program —

The interim CMAQ guidance finally has been released and is attached below. Please read through it carefully because the Federal Highway Administration will be taking comments. We will keep you posted on earnings on the final CMAQ guidance which is due in December of 98. The guidance is available on the web at: <http://www.fhwa.dot.gov/environment/interim.htm>

NOTE ON ELIGIBILITY OF ALTERNATIVE FUELS: Use of alternative fuels has been greatly expanded under the new TEA 21 law. There is one sentence in the new interim guidance below that needs to be clarified. Under Section 3 - Newly Eligible Projects, subsection 3.c. Public Private Partnership, the seventh paragraph, fifth sentence reads "Fleet conversions no longer need to be specifically identified or included in the SIP or maintenance plan in order to be eligible for CMAQ funding." "Fleet conversions" is not limited to the traditional alternative fuels interpretation of a physical conversion of an existing vehicle to an alternative fuel vehicle. Rather, this language is intended to include purchase of Original Equipment Manufactured (OEM) vehicles as well.

Memorandum

Interim Guidance on the Congestion Mitigation and Air Quality Improvement (CMAQ) Program

From: Associate Administrator for Program Development, FHWA
Associate Administrator for Planning, FTA
refer to: HEP-40/TPL-12

To: Regional Federal Transit Administrators
Regional Federal Highway Administrators
Federal Lands Highway Program Administrator

The CMAQ program was reauthorized in the recently enacted Transportation Equity Act for the 21st Century (TEA-21). The primary purpose of the CMAQ program remains the same: to fund projects and programs in nonattainment and maintenance areas which reduce transportation-related emissions. Some changes to the CMAQ program were included in TEA-21 however, and those changes are the subject of this Interim Guidance. The FHWA and FTA intend to issue final, comprehensive guidance on the new CMAQ program by December 1998 and will initiate a process for receiving stakeholder input on that guidance in the near future.

This Interim Guidance provides: 1) informational items on issues related to the reauthorized CMAQ program, 2) new provisions regarding eligible geographic areas under TEA-21, and 3) guidance related to projects now eligible for CMAQ funds. With the exception of the issues discussed in this Interim Guidance, all provisions of the March 7, 1996, Guidance on the CMAQ program continue to apply. Attachments 1-4 provide updated statutory language relating to the CMAQ program.

1. INFORMATIONAL ITEMS

1. a. Authorization Levels and Apportionment Formula

Table 1 shows the CMAQ authorization levels by fiscal year as included in TEA-21. The CMAQ funds will be apportioned to States each year based upon the adopted apportionment formula as shown in Table 2. Following the apportionments, States are encouraged to suballocate CMAQ funds to the nonattainment and maintenance areas in each State. The States need to be mindful that the highest priority for CMAQ funds continues to be transportation control measures (TCMs) identified in the State implementation plan (SIP).

TABLE 1
TEA-21 CMAQ Authorization levels

<u>Fiscal Year Authorization</u>	<u>Amount Authorized</u>
FY 1998	\$1,192,619,000
FY 1999	\$1,345,415,000
FY 2000	\$1,358,138,000

FY 2001	\$1,384,930,000
FY 2002	\$1,407,474,000
FY 2003	\$1,433,996,000

TABLE 2

TEA-21 CMAQ Apportionment Formula

<u>Pollutant</u>	<u>Classification at the time of Annual Apportionment</u>	<u>Weighting Factor</u>
Ozone (O₃) or Carbon Monoxide (CO)	Maintenance	.8
Ozone	Submarginal	.8
	Marginal	1.0
	Moderate	1.1
	Seriuos	1.2
	Severe	1.3
	Extreme	1.4
Carbon Monoxide	Nonattainment (for CO only)	1.0
Ozone and Carbon Monoxide	Ozone nonattainment or maintenance 1.1 x O ₃ FACTOR and CO maintenance Ozone nonattainment or maintenance 1.2 x O ₃ FACTOR and CO nonattainment	
All States-minimum apportionment	$\frac{1}{2}$ of 1 percent total annual apportionment of CMAQ funds	N/A

1. b. Minimum Guarantee

The TEA-21 provides a minimum guarantee that requires each State to receive funding in an amount not less than 90.5 percent of the estimated annual Federal gasoline tax payments that State pays into the Highway Trust Fund. Due to the minimum guarantee, the annual authorizations listed in Table 1 are the basic authorization levels and could be increased depending on actual Highway Trust Fund receipts.

1. c. Apportionment Formula

The CMAQ funds are apportioned according to a formula based on air quality need which is calculated in the following manner. The population of each area in a State, that

at the time of apportionment is a nonattainment or maintenance area for ozone and/or carbon monoxide (CO), is multiplied by the appropriate factor listed in Table 2. Key changes in the apportionment formula under TEA-21 are noted below.

Areas that are designated and classified as submarginal and maintenance areas for ozone are now explicitly included in the apportionment formula;

There are new weighting factors for CO nonattainment areas;

The upper limit on the amount of CMAQ funds that the largest States (California, New York, and Texas) could receive is now lifted, ensuring that CMAQ apportionments more closely reflect needs based upon nonattainment and maintenance area designations and classifications in each State; and

The freeze related to the apportionment formula due to language in the National Highway System Designation Act of 1995 has been lifted. This freeze had the effect of apportioning CMAQ funds based on nonattainment status as of 1994, regardless of whether redesignation had occurred. This approach has now been replaced by a formula using current designations and classification at the time of apportionment.

1. d. Minimum Apportionments

Each State is guaranteed at least $\frac{1}{2}$ of 1 percent of each year's CMAQ authorized funding regardless of whether the State has any nonattainment or maintenance areas.

1. d. 1. States without a nonattainment area

If a State does not have, and has never had, a nonattainment area, the State may use its minimum apportionment for any projects eligible under the STP, in addition to projects eligible under the CMAQ program. As noted in the March 7, 1996, guidance, such States are encouraged to give priority to the use of CMAQ program funds for the development of congestion management systems, public transportation facilities and equipment, and intermodal facilities and systems, as well as the implementation of projects and programs produced by those systems.

1. d. 2. States with a nonattainment area

Some of the States receiving minimum apportionments have nonattainment or maintenance areas. The population in these areas when weighted by the severity of the pollution is insufficient to bring these States CMAQ funds up to the minimum apportionment levels. Additional flexibility is granted under

TEA-21 for these States. Specifically, a State receiving the minimum apportionment may use that portion of the funds not based on its nonattainment and maintenance area population for any project in the State eligible under the Surface Transportation Program

(STP). The FHWA will provide a list of these States and a description of the flexibility granted them at a future date.

1. e. Transferability of CMAQ Funds

States may transfer CMAQ funds to other programs according to the following provision. An amount not to exceed 50 percent of the State's annual apportionment may be transferred less the amount the State would have received if the CMAQ program was authorized at \$1,350,000,000. Any transfer of such funds must still be obligated in nonattainment and maintenance areas. This increment of transferable funds will differ from year-to-year and State-to-State depending on overall authorization levels. Each year FHWA and FTA will inform each State how much of their CMAQ funding is transferable, if any.

1. f. Study on the Effectiveness of the CMAQ Program

The TEA-21 directs the Secretary of Transportation and the EPA Administrator to enter into arrangements with the National Academy of Sciences to conduct a study on the effectiveness of the CMAQ program. Among other things, the study will evaluate the emissions reductions attributable to CMAQ funded projects. The results of the study will be provided to Congress not later than January 1, 2001. The study will be funded by deducting \$500,000 per year from the total CMAQ apportionments for FY 1999 and FY 2000. More information about the status of this effort will be provided as the details and scope of this study are fully developed.

2. ELIGIBLE GEOGRAPHIC AREAS

2. a. Maintenance Areas

Maintenance areas that were designated nonattainment, but have since met the air quality standards are now explicitly eligible to receive CMAQ funding. Such areas must have met the classification requirements of the 1990 Clean Air Act Amendments when designated nonattainment (see 2.c. below) in order to be eligible.

If a State has ozone or CO maintenance areas only, the State must now exclusively use its CMAQ funding in those areas contained within its borders. Previous guidance allowed such States flexibility to use their CMAQ funding for projects eligible under the STP if a State could demonstrate that it had sufficient funding to meet its air quality commitments within a maintenance area. Such flexibility is no longer allowed since maintenance areas are now included in the apportionment formula and the eligibility provisions require that CMAQ funding be used in nonattainment and maintenance areas.

States that have PM-10 nonattainment or maintenance areas only (i.e., no ozone or CO nonattainment or maintenance areas) are granted additional flexibility under TEA-21. Since these areas are not included in the CMAQ apportionment calculation, the State may use its minimum apportionment for projects eligible under the STP or the CMAQ

program anywhere in the State. However, such States are encouraged to use their CMAQ funds in the PM-10 nonattainment and maintenance areas.

2. c. Classification Criteria

An area that is designated as a nonattainment area for ozone, CO or PM-10 under the Clean Air Act prior to December 31, 1997, is eligible for CMAQ funds provided that the area is also classified in accordance with Sections 181(a), 186(a), or 188(a) or (b) of the Clean Air Act. This means that ozone nonattainment areas must be classified “marginal” through “extreme,” and CO and PM-10 nonattainment areas must be classified either “moderate” or “serious” to be eligible for CMAQ funding. Submarginal ozone nonattainment areas are now included in the CMAQ apportionment formula, but are not mentioned in the eligibility criteria of TEA-21. To resolve this apparent oversight, we are extending CMAQ eligibility to submarginal ozone nonattainment areas. Areas that were designated with these classifications and subsequently redesignated to maintenance areas are also eligible.

2. d. Revised National Ambient Air Quality Standards (NAAQS)

The CMAQ eligibility provisions under TEA-21 allow that any area designated as nonattainment after December 31, 1997, be eligible for CMAQ funding even though it may not be classified in accordance with the sections of the Clean Air Act cited above (see section 2.c.). This provision ensures that any areas designated nonattainment as a result of the revised ozone and PM air quality standards, promulgated in 1997, will be eligible for CMAQ funding. Such areas, however, will not be included in the apportionment formula since they will not be given classifications identified in the Clean Air Act Amendments of 1990 (Sections 181(a), 186(a), or 188(a) and (b)). Such areas that are subsequently redesignated to maintenance areas are also eligible.

2. e. Revocation of the 1-Hour Ozone Standard

As part of the transition to the 8-hour ozone standard, EPA recently revoked the 1-hour standard in areas that had the requisite 3 years of “clean” monitoring data. The list of areas for which the 1-hour standard has been revoked is found in the June 5, 1998, Federal Register. Among this group, those areas that had approved maintenance plans by the effective date of the revocation (June 5) will continue to have their maintenance plans in full force. As maintenance areas, they will continue to be eligible for CMAQ funds and will be included in the annual apportionment formula. The conformity requirements will also continue to apply in these areas.

Other areas among the group for which the 1-hour ozone standard has been revoked do not have approved maintenance plans. They may not have submitted a maintenance plan or the plan may not have been approved by June 5. These areas, then, are no longer designated nonattainment or maintenance relative to the 1-hour standard. As such, these areas will not be subject to the conformity requirements and they will no longer be able to

meet the basic statutory requirement for CMAQ eligibility unless they are designated nonattainment or maintenance for CO and/or PM. In order to provide continuity in the transportation/air quality planning process, FHWA/FTA are establishing an interim period for these areas providing some continued eligibility under the CMAQ program. Air quality improvement projects in the first 3 years of the Transportation Improvement Program (TIP) will remain eligible for CMAQ funding, subject to the usual State and local direction regarding project selection. The metropolitan planning organizations (MPOs) in these areas will have 4 months from the date of this guidance to amend their TIPs in response to this guidance. After this time frame, CMAQ funding will be restricted to only CMAQ-eligible projects in the first 3 years of the TIP.

At the time of issuance of this interim guidance, EPA's policies regarding the revocation of the PM-10 standard were still under development. Issues affecting the distribution of CMAQ and eligibility under the program for areas affected by the revocation of the PM-10 standard will be addressed in the final program guidance.

3. NEWLY ELIGIBLE PROJECTS

3. a. Extreme Low-Temperature Cold Start Programs

Projects intended to reduce emissions from extreme cold-start conditions are now eligible for CMAQ funding. This TCM is listed in Clean Air Act Section 108(f)(A)(1) and was heretofore excluded from eligibility for CMAQ funding. Examples of such projects include:

Retrofitting vehicles and fleets with water and oil heaters; and

Installing electrical outlets and equipment in publicly-owned garages or fleet storage facilities.

3. b. Magnetic Levitation Transportation Technology Deployment Programs

The CMAQ funds may be used to fund a portion of the full project costs (including planning, engineering, and construction) pursuant to Section 1218-Magnetic Levitation Transportation Technology Deployment Program of TEA-21 and in accordance with the provisions of Section 1218. For these projects, the Federal share may be up to 100 percent of the eligible costs.

3. c. Public Private Partnerships

The TEA-21 provides greater access to CMAQ funds for projects which are cooperatively implemented by the public and private sectors and/or non-profit entities. Public/private initiatives are addressed in the existing CMAQ guidance (see section II.A.13); however, the new statutory language leads to several important changes regarding the eligibility of joint public/private initiatives.

Proposed programs or projects no longer are required to be under the primary control of the cooperating public agency. Also, two of the three criteria which helped to define eligibility for joint public/private ventures in the March 1996 CMAQ guidance will no longer apply since the restrictions are not supported by the new statutory language. These criteria were: that the activity normally be a public sector responsibility, and that private ownership be shown to be cost-effective. The third criterion, noting the public agency's responsibility to oversee and protect the investment of Federal funds in a public/private partnership, continues to apply.

Eligible activities under the public/private partnership provisions include:

Ownership or operation of land, facilities or other physical assets;

Cost-sharing of project expenses;

Carrying out administration, construction management or operational duties associated with a project; and

Any other form of participation approved by the U.S. DOT Secretary.

While the new statute provides greater latitude in funding projects initiated by private or non-profit entities, it also raises concerns about the use of public funds to benefit a specific private entity. Since the public benefit is in air quality improvement, it is expected that future funding proposals involving private entities will demonstrate strong emission reduction benefits. Furthermore, this new flexibility requires that greater emphasis be placed on an open, participatory process leading up to the selection of projects for funding. Because of concerns about the equitable use of public funds, FHWA and FTA consider it essential that all interested parties have full and timely access in the process of selecting projects for CMAQ funding. This could involve open solicitation for project proposals; objective criteria developed for rating candidate projects; and announcement of selected projects.

Until more comprehensive guidance is issued, all requests for CMAQ funding involving public/private initiatives must be forwarded by the FHWA/FTA field offices to Headquarters for review and prior concurrence prior to project approval.

Eligible costs under this section may not include costs to fund an obligation imposed on private sector or non-profit entities under the Clean Air Act or any other Federal law. For example, CMAQ funds may not be used to fund mandatory control measures such as Stage II Vapor Recovery requirements placed on fuel sellers.

The TEA-21 contained special provisions for alternative fuel projects that are part of a public/private partnership. For purchase of privately-owned vehicles or fleets using alternative fuels, activities eligible for CMAQ funding is limited to the incremental cost of an alternative fueled vehicle compared to a conventionally fueled vehicle. Further, if other governmental funds are used for vehicle purchase in addition to CMAQ funds, such governmental funds must be applied to the incremental cost before CMAQ funds are applied. For transit vehicles and other publicly-owned vehicles or fleets, the provisions of the March 7, 1996, Guidance continue to apply. Fleet conversions no longer need to be specifically identified or included in the SIP or maintenance plan in order to be eligible for CMAQ funding. It is recommended however, that consideration of such projects be coordinated with air quality agencies prior to selection for funding under the CMAQ program. This coordination will ensure that such projects are consistent with SIP strategies to attain the NAAQS or in maintenance plans to ensure continued maintenance of the NAAQS.

Decisions over which projects and programs to fund under CMAQ should continue to be made through a cooperative process involving the State departments of transportation, affected MPOs, and State and local air quality agencies. All projects funded with CMAQ funds must be included in conforming transportation plans and TIPs in accordance with the metropolitan planning regulations of October 28, 1993 (23 CFR 450.300) and the transportation conformity requirements (40 CFR parts 51 and 93, August 15, 1997).

4. Other Provisions—Federal Share Increase for Transit Vehicle Control Systems

The TEA-21 amends 23 U.S. C. 120 (c) to allow an increased Federal share for transit vehicle priority control systems. Section 120 of Title 23 (see Attachment 3) is amended to provide that the Federal share of funding for priority control systems for transit vehicles may be up to 100 percent.

Charlotte M. Adams
Federal Transit Administration

Thomas J. Ptak
Federal Highway Administration

Attachment 1 - Title 23 U.S.C., Highways, Chap. 1 - Federal-Aid Highways, (TEA-21 Changes in Italics)

Attachment 2 - Section 104 Apportionment

Attachment 3 - Title 23 U.S.C., Section 120. Federal Share Payable

Attachment 4 - Section 1310. Uniform Transferability of Federal-Aid Highway Funds